Supreme Court, U. S.
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IN THE

Supreme Court of the United States

No. 75-1638

HORACE V. KELL, et al, APPELLANT

v.

NICK P. CHIVILIS, et al, APPELEE

APPEAL FROM THE SUPREME COURT of GEORGIA

STATEMENT AS TO JURISDICTION

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STATEMENT AS TO JURISDICTION

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Appellants submit herewith their jurisdictional statement as required by Rule 13 of the Rules of the Supreme Court of the United States.

STATEMENT AS TO JURISDICTION

OPINION BELOW

The official report of the opinion delivered by the Georgia Supreme Court appealed from in this case is contained in:

Vol. 236 Georgia Supreme Court p. 226

and a copy of the opinion is appended here to @ App. p. 1.

GROUNDS OF JURISDICTION

This civil complaint, in which the Supreme Court of Georgia denied a motion for a rehearing to review its previous judgment sought to secure declaratory judgment and injunctive relief for taxpayers against a tax digest alleged to have been prepared under statutes of the State which were attacked as unconstitutional in the complaint. (R. 11)

The statutes under attack in the original complaint were those authorizing a different source and standards of valuation for property of persons and corporations making their returns to the State Revenue Department as compared to the source and standards for assessments of property of the plaintiffs; and statutes providing for the use of "ratio study" made by the State De-

partment of Audits in the taxing process.

Plaintiffs, by an amendment (R.31)added to the complaint a second count setting out that on the day prior to the date set for hearing on the first Count of the complaint, the original defendants had forwarded to the State Revenue Commissioner the 1974 tax digest; and that the Commissioner had approved the digest. It was also alleged that the State Revenue Commissioner was required by law to:

1- Examine the digest and adjust the valations as set out therein to make all valuatinns reasonably uniform with valuations of property in other counties of Georgia

2- Adjust valuations of property of different classes in Douglas County so as to make them reasonably uniform with valuations of other classes of property in Douglas County, and

3- Adjust valuations as set out in the Douglas County digest so that the valuations set out therein would be uniform with valuations of property of other taxpayers who make their returns to the State Revenue Commissioner rather than to the local Board of Tax Assessors.

Count II alleged that the valuations of plaintiffs property in the 1974 digest of Douglas County were not reasonably uniform with the valuations of property owners in

other counties in Georgia; with valuations of other classes of property in Douglas County; and with valuations of property of those making their returns directly to the State Revenue Commissioner.(R. 32)

Count II sought injunctive relief as to all of the defendants, including the State Revenue Commissinner from implementing the 1974 tax digest because the same was discriminatory, unequal and unconstitutional in that the actions of the State Revenue Commissioner were not subject to review administratively or otherwise, except at the instance of the local Board of Assessors & who were joint defendants.

In a subsequent amendment to both Counts I and II of the complaint, plaintiffs added a number of specific attacks on the Georgia Statutes which require a use of the standard of "fair market value" in the taxing process on the ground that such statutes are too indefinite and vague to be enforced in that men of common intelligence must necessarily guess at its meaning and differ as to its application; and it is therefore a deprivation of plaintiffs' property without due process of law & violative of the 14th Amendment

The said amendment further contained an att-

ack on the said statutes on the grounds that if they were not "per se" violative of the 14th Amendment, still they deprive plaintiffs of their property without due process of law as applied in that the use of the standard of "fair market value" as implemented had caused plaintiffs' property to be assessed and taxed at a high & disproportionate value as compared to the property of others in the county; & with the property of those owning property in other counties of Georgia; and with property of those who make their returns to the State Revenue Commissioner.

The said amendment further included attacks on the Georgia Statutes providing a use of a "ratio study" made annually for application to the various county tax digests by the Department of Audits on the ground that it deprived owners of personal property of their property without due process of law contrary to the 14th Amendment of the U.S. Constitution because it refers to a "representative number of usable transactions" that are to be studied & this term is too vague and indefinite to be enforced because men of common intelligence must guess at their meaning & differ as to their application; and for the additional reason that owners of per-

sonal property and their taxes theron are affected and controlled by the ratio between real estate sales figures to real estate assessments; when said standard or ratio is unrelated in any way to values of personal property. (R. 66)

This amendment to each count contained a prayer that the court enter a declaratory judgment holding the Georgia Statutes attacked as unconstitutional & based on the allegations that they violated the 14 th Amendment to the U.S. Constitution.

On the 3rd day of July, 1975, and after lengthy evidentiary hearings, the trial court entered an order in which it recognized the "broad attacks" made on the 1974 Douglas County tax digest, the tax structure of the State and certain statutes governing such tax structure. (R. 217)

In that order, the trial court stated, as one of the issues before the court, " 5. Are the laws relating to assessment of property of plaintiffs unconstitutional as compared to the statutes relating to railroads and public utilities?" -and-

" 6. Whether or not the laws relating to the assessment of property of the plaintiff is unconstitutional as compared to the st - atutes relating to railroads and public utilities?" -and-

"7. Does the method used as to railroad and public utilities for assessment purposes when compared with that used by local authorities as to plaintiffs create an unequal treatment of the plaintiffs and result in their paying a disproportionate high percentage of Douglas County taxes?" (R. 221) -and-

"8. Is the term "fair market value" unconstitutional as being too vague and indefinite..." -and-

" 9. If the term "fair market value" is, per se, an unconstitutional standard, has it been unconstitutionally applied in Douglas County and in the State of Georgia?"

" 10. Does the fact that the taxing laws of Georgia providing for the return, assessment and collection of taxes as to railroad companies....providing that the companies' property shall be assessed in the first instance upnn the basis of the value given by the returns invalidate such law or result in a void tax digest in Douglas County because the laws providing for the assessment of personal property does not have such provision?" -and-

"11. Are plaintiffs treated unequally and thereby paying a disproportionately high percentage of Douglas County taxes because

railroads and public utilities under the law have their property apportioned across the several counties of the state and because the State Revenue Commissioner is authorized to adjust returns of such taxpayers on the basis of "any information he can obtain"? " -and-

"12. Is Code Section 92-7008, Ga. Laws 1970, pp. 542, 543; 1972, pp. 829-831) unconstitutional on the basis that the words "representative number of usable transactions" is too vague and indefinite to have practical meaning without additional guidelines to assure legal application of the law?" -and-

"13. Does Code section 92-7008 and known commonly as the "ratio study statute" destroy uniformity of implementation of the taxing laws as between owners of real estate and owners of personaly because of the use of the ratio study as applied to both realty and personalty?" -and-

"16. Are the plaintiffs being treated in a non-uniform and unequal manner under all or either of the complaints made by them so as to invalidate the tax digest of Douglas County, Ga. or so as to invalidate a portion of the levy for the year 1974 to the extent that it can be considered by the court under the evidence in the record."

In its order of July 3, 1975, the trial court found that real estate in Douglas County adjacent to Carroll and Cobb County as compared to property in said other counties were assessed at as much as five times more at fair market value than in the other coun-counties. (R. 227)

The trial court also found, that as a result of the use of the sales ratio study,in 1974, property in Douglas County, Ga. was assessed at 100% of fair market value for taxes, while properties in adjoining counties were assessed at far below 100% of fair market value. (R. 228)

The trial court further found, that the increase in the digests of surrounding counties for 1974 was the result of capital improvements of a substantial nature ; but that the increase in Douglas County was because of a general reappraisal of property. (R. 228)

The trial court further found, that the levy of 1/4 mil tax for state purposes in the Douglas County jurisdiction which was valued on the digest at 100% of fair market value requires the payment of twice as much State taxes as is required in Paulding County, in which property was assessed at 50% of fair market value. (R. 241)

The trial court further found that the cit-

izens of Douglas County are required to pay a proportionately larger share of taxes for education of their children than those persons owning property in other counties. (R. p. 242)

The trial court found no invalidity of the digest for any reason claimed resulting from differences in statutes or in assessments of railroads or public utilities. (R. 242)

The trial court found that the term "fair market value" and the use thereof did not result in a lack of uniformity. (R. 243)

The trial court found that plaintiffs did not pay disproportionate taxes because of an apportionment of railroad and public utility properties among the several counties.

The trial court found no fault in the use of the ratio study statute. (R. 243)

The trial court found plaintiffs were treated in a non-uniform and discriminatory manner in equalizing properties between the counties for ad valorem tax diges purposes and a discrimination because of lack of uniformity within the territorial limits of the State. (R. 243)

The trial court entered an injunction that State levy of ad valorem taxes be enjoined& refused an injunction as to County taxes on the same digest.

Appellants in Enumeration of Errors # 9 in the State Supreme Court assigned error on a finding by the trial court that there was no inequality or lack of uniformity in the Douglas County digest for 1974 for any reason claimed by plaintiffs resulting in differences in statutes or assessments of railroad companies or public utilities. Appellants also enumerated as error in Case No. 30620 each substantive finding of the trial court contrary to the contentions of plaintiffs set out in the complaint.

The State Revenue Commissioner appealed the trial court's order enjoining the collection of State tax, and the taxpayers appealed from the portion of the order denying injunctive relief as to collection of County taxes.

The Supreme Court of Georgia expedited the hearing of the appeals in these cases, and in other cases involving basically the same issues; heard arguments in all cases on the same date, and decided them all on Jan. 27, 1976.

The Supreme Court found against the contentions of the appellants as to the Constitutional attacks on the Statutes relating to the return and assessments of railroads and public utilties and as to the attack on the standard of "fair market value".

The Supreme Court also found against the

contentions of plaintiffs as to the unconstitutionality of the "sales ratio study", and the Supreme Court further held that because it would create a "chaotic condition in the tax affairs of the State" if individual taxpayers in each county had a right to challenge the validity of the decisions of the State Revenue Commissioner as to equalizing the valuations of property as between the counties and that the individual taxpayers had no right or remedy to challenge such decisions even when they created a situation as found by the trial court in which appellants were paying more than their fair share of the taxes.

The Supreme Court reversed the injunction entered by the trial court as to the collection of the State tax levy.

Appellants filed a motion for rehearing, pointing out that the decision of the Supreme Court had violated their Federal Constituional rights to due process and equal protection of the laws.

On February 11, 1976, the Supreme Court entered its final judgment denying a rehearing to plaintiff-appellants.

This appeal is taken pursuant to 28 U.S.C 1257 (2), providing for an appeal from the decision of the highest Court of a State

to the U.S. Supreme Court where substantive Federal questions were decided by the State court adversely to the contentions of the party appealing.

The judgment sought to be reviewed was dated February 11, 1976, and entered the same date and overruled the motion for a rehearing as to the decision of said Supreme Court of Georgia entered on Jan. 27, 1976.

The statute believed to confer on this Court jurisdiction in such cases is:

28 U.S. Code Section 1257 (2).

Cases sustaining jurisdiction in such as the present case are:

Bantam Books, Inc v. Sullivan,372 U.S 58

Myles Salt Co. v. Iberia, 239 U.S. 478

The statutes involved in this appeal are:

Georgia Laws 1909, p. 72 (Ga. Code Ann. 92-5701)

Georgia Laws1909 p. 78 (Georgia Laws 1968 p. 385 (Ga. Code Ann. 92-5702)

Georgia Laws 1968, pp. 358,359 (Ga. Code Ann. 92-5703)

Georgia Laws 1889, p. 29 (Ga. Code Ann. 92-2703)

Georgia Laws 1889, p. 29; Georgia Laws 1917 p. 197; (Ga Code Ann. 92-2704)

Georgia Laws 1889 p. 29; Georgia Laws

1916 p. 34; Georgia Laws 1927 p. 136 ; Ga. Code Ann. 92-2706.

Georgia Laws 1927, p. 98; Georgia Laws 1935 p. 64, Ga. Code Ann. 92-5902.

Georgia Laws 1972, p. 1119; Ga. Code Ann. 92-5903.

Georgia Laws 1877 p. 126; Georgia Laws 1905 p. 68; Georgia Laws 1972, p. 1123; Ga. Code Ann. 92-600.

Georgia Laws 1970 p. 542-543: as amended by Georgia Laws 1972 p. 829-831; Ga. Code Ann. 92-7008.

The laws attacked in this appeal are appended hereto, see Appendix- pp.

QUESTIONS PRESENTED

1. Were appellants deprived of their property without due process of law contrary to the 14th Amendment to the Constitution of the United States by the decision that they have an adequate and complete remedy at law to challenge the uniformity of their tax assessments when they are not entitled to appeal inequalities created by the changes made in the returns of other taxpayers, but only changes made in the returns of appellants?

2. Were appellants deprived of their property without due process of law by the

decision upholding procedures set out in Georgia taxing statutes which authorizes and requires railroads and public utility. companies to make their property tax returns to, and have their assessments adjusted by the State Revenue Commissioner; while at the same time authorizing and requiring appellants to make their returns to and have their assessments adjusted by local Board of Tax Assessors, and no method of contesting the equality and uniformity of such assessments is provided by law?

3. Were appellants deprived of their property without due process of law contrary to the 14th Amendment to the United States Constitution by the decision that ratified and confirmed a tax digest in which there was a finding by the Court, as a matter of fact, that appellants property was assessed at 100% or more of fair market value, while property of public utilities was assessed 40% of fair market value?

4. Is the standard "fair market value" established by Georgia taxing statutes too vague and indefinite per se (or as implemented) so as to make such statutes unconstitutional because violative of the 14th Am-

endment to the United States Constitution?

5. Are Georgia taxing statutes providing for the use of a "ratio study" of real estate sales as a standard for appriaising & assessing personal property violative of the 14th Amendment to the Constitution of the United States?

6. Did failure of the State Revenue Commissioner to equalize the assessments of property within Douglas County as required by Statutes, deprive appellants of their property rights without due process of law contrary to the 14th Amendment to the Constitution of the United States?

7. Did the Supreme Court judgment reversing the trial courts' enjoining of the 1974 State of Georgia tax levy in Douglas County in spite of the lack of a remedy or process to question and correct the State Revenue Commissioner's failure to examine and make uniform the tax digests of the various counties in Georgia, deprive appellants of their property without due process of law contrary to the 14th Amendment to the Constitution of the United States?

8. Did the actions and decisions set out in 1-7 above violate the equal protection requirements of the 14th Amendment to the

Constitution of the United States, and the 5th Amendment to the Constitution of the United States?

STATEMENT OF THE CASE

(a) The Federal questions involved in this appeal were raised in the following manner and at the times indicated:

Appellants were plaintiffs in the trial court and sued originally the local taxing officials in the county. The real basis of their suit was that the tax assessors had arbitrarily changed the values of appellants' property returned by them as a result of a scheme and practice to increase tax assessments in the County. (R 8). It was contended that the changes made on the returns of appellants were not proportionate nor equal to the changes made upon the returns of other property owners in Douglas County and in other counties in the State. It was contended in addition, that the same standards and methods of assessing real estate and personal property were not used, and the results of this procedure were that the assessments bore little relationship to the standard

of "fair market value" for all property required by the taxing laws.(R.8) It was further alleged that plaintiffs' property had been assessed in a discriminatory manner when compared to the owners of property who made their returns to the State Revenue Commissioner. (R.9) It was also set out in the complaint that the tax assessors had used studies of sales of real estate made by the Department of Audits without using any studies of sales of personal property. (R.9) The complaint prayed that the statutes authorizing the return of property to the State Revenue Commissioner by railroads and public utilities ; and the statutes providin for the use of the "sales ratio" study in the taxing process be held void because violative of the United States Constitution. (R. 11) Subsequently, and after an amendment making the State Revenue Commissioner a party to the cause, plaintiffs amended their complaint (R. 60) and contended in the amendment that the use of the "fair market value" standard and the statutes providing for the use of "fair market value" were too vague and indefin-

ite to be capable of enforcement. In the amendment, appellants also attacked the system of laws established by specific statutes set out in the complaint whereby the railroad and public utility companies in Georgia are authorized to make their returns of property, not to the tax assessors of the various counties, as the appellants were required to do, but to the State Revenue Commissioner, whose duty it becomes to examine such returns & "if in his judgment" such property was'nt returned at full value, then he would adjust such values "from any information he could obtain." These assessing laws also favor the utilities over appellants in providing them with the remedy of an affidavit of illegality, which is not available to appellants. This amendment further attacked the laws providing for the use of the "sales ratio" study on the grounds that it excluded utilities' property; it was vague and indefinite in providing for a study of a "representative number of usable transactions", and it did not provide for the study of personal property sales; but personal property assessments are adjusted by the use of such study.

The complaint, as amended, asked that the court hold the statutes attacked void because violative of the 14th Amendment to the United States Constitution and to enjoin implementation of the Douglas County tax digest because it was prepared under the authority and procedures of these statutes. (R. 65,66).

The court then had extensive evidentiary hearings and appellants produced the following testimony: The tax assessor of an adjoining county testified that it would be "impossible" to assess property properly under the Georgia tax laws (R. 176) Also Fulton County tax assessor Chairman testified it would be "impossible" to do a check of values of personal property. (R. 140) The indefiniteness of the " fair market value" standard is reflected in the testimony of one assessor that " fair market valu is what you pay for a piece of property" and testimony of another that " if a person pays $36,000 for property maybe it is and maybe it is not the fair market value."(R. 181 & 145) Cobb County assessor testified that in his county, where property sells for $11,000 per acre, it is still sometimes

assessed at $5,000/acre. (R. 182) The Douglas County assessor testified that in using the "vair market value" standard, the Board established uniform per acre value assessments as follows: wasteland $112- common land $938: and road frontage $ 2,250 per acre. (R 272.) In the evidentiary hearings, the property tax division director of the State Department of Revenue testified that the property of public utilities is not assessed by the use of the "ratio study" and that the property of the utilities is not assessed by individual items, as is the property of individuals, but these companies' property is taxed by applying an assessed value of the "whole company" as a business, considering profit or loss & many other factors that the individual is not allowed to have considered. (R.272) The trial court recognized the broad constitutional attacks made on the taxing statutes and administration thereof (P. 219-223), and entered an order enjoining the collection of the 1/4 mil State tax levy for 1974 against plaintiffs because of the great disparity (as much as 500%)

in the assessments of plaintiffs and those taxpayers living in surrounding counties. (R. 227). The trial court found from the evidence that all property in Douglas County was on the tax digest at 100% of fair market value while the property of those owning property in surrounding counties was far below 100%, because of the use of the "sales ratio study".

The trial court, in its opinion, recognized a landmark decision of the U.S. Supreme Court in tax cases which arose in Georgia, Greene v. L & N Railroad Co. 244 U.S 499 and the rationale of the present complaint when he quoted therefrom, " the duty to assess at full value is not supreme but yields to the duty to avoid discrimination, For want of uniformity in taxable values, the assessments made against the property of the plaintiff.. & other similarly situated taxpayers are null and void; they are clearly violative of the uniform-taxation clause of our Constitution, and the equal protection clauses of our Federal Constitution." (R. 230).

In spite of the overwhelming evidence & even its own findings of fact that property of plaintiffs was assessed unequally

and discriminatorily, the trial court did not enjoin the collection of County taxes based on the assessments, but did enter an injunction against the State tax levy.

The appellants appealed his decision as related to collection of County taxes, and the State Revenue Commissioner appealed it as it related to the enjoining of the 1/4 mil state levy, and appellants filed a cross appeal.

The Supreme Court of Georgia expedited a hearing on these cases, and cases of similar import, heard arguments on all of the cases on the same day and decided the cases on the same day.

In these two cases from Douglas County, the Supreme Court of Georgia denied the appeal of plaintiffs, and sustained the appeal of the State Revenue Commissioner, and in its decision, it stated that the plaintiffs were not entitled to attack the non-uniform and discriminatory assessments of their property made by the State Revenue Commissioner, but only the county tax assessors can question adjustments made by him. (App. 7) It is difficult to understand how this could be a remedy for the individual taxpayer, when the county tax assessors

are charged by Georgia Laws to follow the directives and procedures established by the State Revenue Commissioner.

To the decision of the Supreme Court of Georgia, appellants filed a motion for a rehearing in which basically the same constitutional attacks on the various statutes and procedures were contended to be applicable to the Supreme Court's decision in the case; and in which the Supreme Court's voiding the injunction against the State tax levy was attacked as being violative of the 14th and 5th Amendments to the Constitution. (App. 16)

The Supreme Court of Georgia, on the 11th day of February, 1976, rejected all of the appellants' contentions, and denied a rehearing. (App. 21)

FEDERAL QUESTIONS ARE SUBSTANTIAL

The federal questions raised in the trial court and Supreme Court of Georgia, involving whether the state statutes relating to tax assessments and the manner in which the statutes were applied, were violative of the 14th and 5th Amendments, were of the essence of appellants' claims. They sought protection of the court from discriminatory

taxing statutes and procedures as being an infringement of their federal constitutional rights. The trial court recognized the evil as applied at the State level and enjoined the tax; but failed to provide the taxpayers a remedy for the unequal and discriminatory county taxes.

The Supreme Court of Georgia took away even the small relief afforded by the trial court.

Both courts held the taxing statutes to be constitutional (because they upheld the payment of taxes sought to be imposed on appellants).

The federal questions which were raised at the very beginning of this litigation, and which were pressed continuously in the trial and appellate State Courts, were of the very essence of the suit, and would be determinative of the issues if properly & consistently adjudicated.

Because of the fact that not just these appellants, but all of the property owners in Georgia are oppressed by these taxing laws that give tremendous advantages to railroad companies and public utilities

and because these laws spawn inequality and non-uniformity in the tax burden of the citizens of Georgia, the questions presented are of a substantial nature, and the resolution of these questions involving federal constitutional questions and considerations, should require plenary consideration, with briefs on the merits and oral argument.

Respectfully submitted,

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GEORGIA, POLK COUNTY.

I, Marson G. Dunaway, Jr., one of the attorneys for HORACE V. KELL, appellant, herein, hereby certify that on the 8th day of May, 1976, I served a copy of the foregoing STATEMENT AS TO JURISDICTION on counsel for the appellees herein, by mail- a copy thereof, in an envelope with first class postage prepaid to:

Hon. Arthur K. Bolton, Attorney General
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Hon. WilliamC. Tinsley II
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This 8th day of May, 1976.

Marson G. Dunaway, Jr.
pf Counsel for Appellants.